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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-324

EXXON CORPORATION, SHELL OIL COMPANY, AMOCO OIL COMPANY and ATLANTIC RICHFIELD COMANY,
Petitioners

v.

ENVIRONMENTAL PROTECTION AGENCY,
Respondent

REPLY MEMORANDUM OF PETITIONERS

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On October 6, 1975, this Court granted certiorari in *Union Electric Co. v. Environmental Protection Agency*, No. 74-1542. As the Solicitor General correctly states, the question presented in *Union Electric* depends upon the EPA "Administrator's obligation to consider economic and technological factors in determining whether to approve a state plan." (Resp. Mem. 7.) This Petition for certiorari presents the *identical* question in the context of the EPA Administrator's obligation to consider such factors in promulgating his own plan following disapproval of a state plan. Far from being "fundamentally different" as asserted by the Respondent (Resp. Mem. 8.), the requisite considerations of the EPA Administrator in both

instances are fundamentally equivalent. See 42 U.S.C. § 1857c-5 and 40 C.F.R. Part 51.[1]

Respondent opposes certiorari in this case on the ground that the court of appeals nominally considered economic and technological factors by ruling legally irrelevant its own finding that the regulations challenged here were technologically and economically infeasible. (Resp. Mem. 5-6.)[2] *Union Electric* cannot be distinguished on this basis since the court of appeals in *Union Electric* also considered economic and technological factors in the same hollow sense of ruling them legally irrelevant under the Clean Air Act. (515 F.2d at 216-19.)[3]

Actually, if certiorari were denied in this case, inconsistent and anomalous results might follow depending upon how this Court decides *Union Electric*. Thus, if the Court were to rule in *Union Electric* that EPA must disapprove a state plan which contains economically or technologically infeasible regulations, the court of appeals ruling in this case, if left standing, could permit the EPA

1. If anything, the reasons for granting certiorari here are even more compelling than in *Union Electric*. For whatever the state's prerogative to disregard economic and technological factors in adopting an implementation plan "more stringent than . . . necessary to attain the national ambient air quality standards" (Resp. Mem. 7, n.8), the EPA Administrator is *not* authorized to impose economically and technologically infeasible regulations on such a basis.

2. Respondent maintains that "EPA fully considered the feasibility" of the regulation challenged here. (Resp. Mem. 6, 8.) But actually, safety and economic feasibility factors were completely ignored by the EPA and technology availability was discussed in only two conclusionary statements which were completely discounted by the court of appeals. (499 F.2d at 312.)

Neither can *Union Electric* be distinguished on the basis that other legal remedies are purportedly available since precisely the same legal remedies would be available to the Petitioner in *Union Electric*.

3. In fact, the *Union Electric* court cited the court of appeals here as supporting its decision that economic and technological factors need not be considered by the Administrator. (515 F.2d at 218.)

Administrator to impose the same or similar infeasible regulations in his own implementation plan following disapproval of the state plan.

Accordingly, this Petition for certiorari should be granted so that the Court can provide a comprehensive resolution of the role of economic and technological factors both in the EPA Administrator's evaluation of state plans and in promulgation of his own plan in the circumstances of disapproval. Alternatively, the Court may wish to defer disposition of this Petition until after *Union Electric* is decided.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three printed copies of the foregoing Reply Memorandum of Petitioners have been mailed this 10th day of November, 1975, postage prepaid to:

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